

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MICHAEL MITCHELL

Defendant.

ORDER

FILED

IN CLERK'S OFFICE  
U.S. DISTRICT COURT, E.D.N.Y.  
04-CR-497 (NG)

★ JUN 1 2005 ★

BROOKLYN OFFICE

GERSHON, United States District Judge:

Pursuant to the mandate issued by the Court of Appeals for the Second Circuit on April 29, 2005, this case has been remanded for further proceedings in conformity with *United States v. Booker*, 125 S.Ct. 738 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005), for this court to consider whether a resentencing is warranted. As set forth in *Crosby*, in determining whether to resentence defendant, the court will consider whether, under the circumstances existing at the time of the original sentence, the sentence originally imposed would have been materially different had the Sentencing Guidelines been only advisory.

The court is in receipt of the May 26, 2005 letter of Peter J. Fabricant, Esq., requesting a resentencing. The court notes that counsel's letter refers to events that have occurred since the date that defendant was originally sentenced. Counsel is advised that, pursuant to the decisions of the Court of Appeals, the determination of whether to resentence defendant will be based solely on the circumstances that existed at the time of the original sentence, in light of the currently applicable statutory requirements as explained in *Booker/Fanfan* and *Crosby*. If defendant wishes to submit additional papers addressing whether a resentencing is warranted, these should be submitted by June

DIF

14, 2005. The government's response is due on June 28, 2005.

**SO ORDERED**

**Nina Gershon**  
**United States District Judge**

**Dated:** May 31, 2005  
Brooklyn, New York